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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,046	01/16/2001	Robert Wessel	RWS-14863WO	2987

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EXAMINER

MCANULTY, TIMOTHY P

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 03/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,046

Applicant(s)

WESSEL, ROBERT

Examiner

Timothy P McNulty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it contains legal phraseology.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Regarding claim 4, the phrase "like a hinge" in line 3 of claim 4, renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

- b. Regarding claim 7, the recitation of "the latter" in line 4 of claim 7, renders the claim unclear regarding which element "can be arranged in a recessed manner on the shift mechanism."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being anticipated by German Patent

Document DE 298 04 998 U1.

German Patent Document DE 298 04 998 U1 discloses in figures 1 and 2, a closure member 6 made of rubber having a thickened extension 11 extending into a housing 2 through an opening (not numbered) in the housing; said housing having a holding member 14; said closure member also having an upper lip 10 that rests over an edge of the opening.

Regarding claim 1, the limitation of the housing being a shift mechanism for a bicycle is not positively recited and therefore has been given no patentable weight.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Seidler.

Seidler discloses in figures 1 and 2 a closure member 12 made of elastic material having a thickened extension 20 extending into a housing 14, a hinge 18; an upper lip 26 which rests over the edge of an installation opening; and a lower lip 29 sliding under the edge of the installation opening.

Regarding claim 1, the limitation of the housing being a shift mechanism for a bicycle is not positively recited and therefore has been given no patentable weight.

Claim Rejections - 35 USC § 103

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seidler in view of robbins et al..

Seidler discloses the basic apparatus as previously cited but does not disclose the lower lip at a point furthest away from the extension. However, Robbins et al. teaches in figures 1 and 3 a hinged plastic cover including a lower lip that slides under the edge of an installation opening

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wherein the lower lip 138 is at a point furthest away from an extension 114. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Seidler in view of the teachings of Robbins et al. to position the lower lip at a point furthest away from the extension to provide for a secure latch and tight seal around all edges of the installation opening.

Allowable Subject Matter

8. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art regarding closures in general:

U.S. Patent No. 5,139,181 to VerWeyst

U.S. Patent No. 4,942,271 to Corsi et al.

U.S. Patent No. 1,923,481 to Ford

U.S. Patent No. 5,367,827 to Tajima et al.

U.S. Patent No. 5,437,206 to Boor

U.S. Patent No. 5,062,315 to Yoshigai


U.S. Patent No. 5,964,123 to Arbeiter


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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00) alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.


DAVID A. BUCCI 3/1/02
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

tpm 
March 8, 2002